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CEDAR BLUFF UNIT OF THE PICK-SLOAN MISSOURI BASIN PROGRAM, KANSAS

NOVEMBER 23 (legislative day, NOVEMBER 6), 1989.—Ordered to be printed

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Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 53]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 53), to authorize the reformulation of the Cedar Bluff Unit of the Pick-Sloan Missouri Basin Program, Kansas, to provide for the amendment of water service and repayment contracts, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. On page 2, line 20, strike "pool." and insert

> pool: *Provided,* That the State of Kansas shall not permit utilization of water from Cedar Bluff Reservoir to increase irrigation of lands in the Smoky Hill River Basin from Cedar Bluff Reservoir to its confluence with Big Creek.

2. On page 3, line 3, strike "the" and insert in lieu thereof "all".

3. On page 3, line 6, strike in its entirety the sentence that begins "After the reformulation" and insert in lieu thereof

> After the reformulation of the Cedar Bluff Unit authorized by this Act, any revenues in excess of operating and maintenance expenses received by the State of Kansas from the sale of water from the Cedar Bluff Unit shall be paid to the United States and covered into the Reclamation Fund to the extent that an operation, maintenance and replacement charge or reimbursable capital obligation exists for the Cedar Bluff Unit under Reclamation law.

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Once all such operation, maintenance and replacement charges or reimbursable obligations are satisified, any additional revenues shall be retained by the State of Kansas.

4. On page 3, line 16, after the word "purpose." insert the following:

If any of the property transferred by this subsection to the State of Kansas is subsequently transferred from State ownership or used for any purpose other than those provided for in this subsection, title to such property shall revert to the United States.

5. On page 3, line 25, strike in its entirety the sentence that begins "The transferee of" and insert a new section 5 as follows:

SEC. 5. LIABILITY AND INDEMNIFICATION.

The transferee of any interest conveyed pursuant to this Act shall assume all liability with respect to such interests and shall indemnify the United States against all such liability.

6. On page 4, line 4, strike "5" and insert in lieu thereof "6".

PURPOSE OF THE MEASURE

The purpose of S. 53 is to permit the Secretary of the Interior and the State of Kansas to implement a memorandum of understanding providing for reformulation of the Cedar Bluff Unit of the Pick-Sloan Missouri Basin Program so as to terminate an irrigation repayment contract and shift reservoir operations toward recreational, fish and wildlife and groundwater management purposes.

BACKGROUND AND NEED

S. 53 would authorize the Secretary of the Interior to take certain steps to salvage a Bureau of Reclamation project unit in Kansas which is now of quite limited utility. The Cedar Bluff Unit, part of the Pick-Sloan Missouri River Basin Program, is located on the Smoky Hill River in west-central Kansas. It was authorized as a multipurpose unit to provide flood control, irrigation, municipal water supply, fish and wildlife, and other benefits. Completed in 1951, the Cedar Bluff Unit includes the dam and reservoir, an irrigation distribution, system designed to serve the 6,800-acre Cedar Bluff Irrigation District (CBID), a fish hatchery built by the U.S. Fish and Wildlife Service, and certain recreational improvements made by the State of Kansas.

Total construction cost of the dam, reservoir and irrigation district was about $18 million. Reimbursable construction costs allocated to irrigation are approximately $7.9 million, of which the CBID is contractually obligated to repay $731,000. The remainder, approximately $7.2 million, would be repaid by Pick-Sloan Missouri River Basin Program power revenues.

S. 53 was introduced in recognition of the fact that Cedar Bluff does not work as planned and, indeed, probably will never do so. Planning estimates of the area's average natural runoff may have been overly optimistic. Changes in soil conservation practices and increasing groundwater withdrawals in the drainage above Cedar

Bluff have significantly reduced flows into the reservoir. As a result, Cedar Bluff has not been able to provide irrigation water since 1978. In recent years, the Cedar Bluff Irrigation District has been unable to meet its repayment obligations or cover operations and maintenance costs. The Bureau has deferred the repayment and operations and maintenance charges. The District has been able to repay only $110,000 of its $731,000 repayment obligation, leaving an upaid balance of $621,000. In light of these problems, the District has opted to disband, along with the State, Bureau of Reclamation, and Fish and Wildlife Service entered into negotiations in 1987 to try to make the best of a bad situation. S. 53 is the product of those negotiations.

If enacted, S. 53 would relieve the district of its repayment obligation in exchange for a payment of $365,424 by Kansas to the Department of the Interior. This amount was negotiated between Kansas and the Bureau of Reclamation as satisfaction for all reimbursable costs associated with the irrigation features of the Unit. The State would continue to be responsible for a proportionate share of the annual operation, maintenance, and replacement costs of the dam and reservoir. The bill does not authorize transfer of title, except with respect to those properties specified in subsection 3(b) and section 4.

S. 53 would also permit a fundamental restructuring of the unit's operational criteria on terms provided in a memorandum of understanding (MOU) between the Bureau of Reclamation, U.S. Fish and Wildlife Service, State of Kansas, and CBID. The MOU, referenced in the bill, would put a higher priority on in-reservoir and downstream fish and wildlife, recreation, and provide a means to recharge a downstream aquifer utilized by the City of Hayes. Reformulated in this fashion, Cedar Bluff would be of greater benefit to the State of Kansas than is now the case.

LEGISLATIVE HISTORY

S. 53 was introduced by Senators Dole and Kassebaum on January 25, 1989. A substantially similar bill, S. 2678, had been introduced by Senator Dole in the 100th Congress.

The Subcommittee on Water and Power held a hearing on S. 53 on September 14, 1989. At its business meeting on November 1, 1989, the Committee ordered S. 53 favorably reported, with amendments.

A similar measure has been reported out of the House Committee on Interior and Insular Affairs as one provision of H.R. 2567.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on November 1, 1989, by a unanimous vote of a quorum present recommends that the Senate pass S. 53 if amended, as described herein. The rollcall vote on reporting the measure was 18 yeas, 0 nays, as follows:

Yeas	Nays
Mr. Johnston	
Mr. Bumpers	
Mr. Ford	

Mr. Metzenbaum [1]
Mr. Bradley
Mr. Bingaman [1]
Mr. Wirth
Mr. Conrad
Mr. Heflin
Mr. McClure
Mr. Hatfield
Mr. Domenici [1]
Mr. Wallop [1]
Mr. Murkowski
Mr. Nickles[1]
Mr. Burns
Mr. Garn[1]
Mr. McConnell

[1] Indicates voted by proxy.

COMMITTEE AMENDMENTS

Concerns were raised to the Committee that aquifer recharge downstream from Cedar Bluff made possible by this reformulation might lead to increasing irrigation withdrawals from that aquifer. This would have had the effect of creating a new class of irrigation beneficiaries from the Cedar Bluff Unit who, unlike the original irrigation district, would have had no contractual obligations to the Federal Government, and who might have become subject to the acreage limitations and other provisions of reclamation law. The State of Kansas advised the Committee and testified that the State had no intent to increase irrigation withdrawals in the Smoky Hill drainage below the Cedar Bluff Unit and had, in fact, recently restricted withdrawals allowed under State water right in that area. The Committee amended S. 53 to make clear its understanding that Kansas will not permit ground or surface water from the Cedar Bluff Unit to be used to increase irrigation in the area below the Cedar Bluff Unit.

The State of Kansas will retain revenues from the sale of water from the Cedar Bluff Unit, except to the extent that an operation, maintenance or replacement charge or reimbursable obligation exists for the Cedar Bluff Unit, including such charges and obligations as may be incurred in the future to ensure dam and reservoir safety. Subsection 3(a) has been amended to make clear the Committee's intent that revenues received by the State of Kansas from sale of water from the Cedar Bluff Unit and paid to the Federal Government should be covered to the Reclamation Fund, not the General Fund.

Subsection 3(b) authorizes transfer of a fish hatchery from the United States to the State of Kansas. The Committee amended this subsection to ensure that title to the hatchery will revert to the United States if the hatchery is transferred by the State of Kansas or used in a manner inconsistent with the purpose of the legislation which, in this context, is to benefit the public interest in fish and wildlife.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 8, 1989.

Hon. J. BENNETT JOHNSTON, Jr.,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 53, a bill to authorize the reformulation of the Cedar Bluff Unit of the Pick-Sloan Missouri Basin Program, Kansas, to provide for the amendment of water service and repayment contracts. This bill was ordered reported by the Senate Committee on Energy and Natural Resources on November 1, 1989.

We estimate that enactment of S. 53 would result in additional receipts to the federal government totaling $365,424 in 1990 and about $15,000 a year in subsequent years.

Bill purpose: S. 53 would authorize the Department of the Interior (DOI) to reallocate water in the Cedar Bluff reservoir from irrigation to other project purposes and would allow the State of Kansas to purchase the right to use and control water in the reservoir for specified purposes. The bill would also relieve the Cedar Bluff irrigation district of its obligation to repay certain costs in exchange for payments to the U.S. government from the State of Kansas. Finally, S. 53 would authorize DOI to transfer a fish hatchery and other irrigation facilities to the State of Kansas.

Background: As originally designed, the Cedar Bluff reservoir was constructed to provide irrigation, flood control, municipal water supply and fish, wildlife, and recreation benefits. Because of insufficient supplies of water to the reservoir over the past 11 years, however, no water has been provided for irrigation purposes and the irrigation district (which is no longer in operation) has been unable to repay $621,078 in obligations to the U.S. government. The repayment obligation—which would have required the district to repay its debt in equal annual installments through the year 2015—has been deferred each year since 1978. The Bureau of Reclamation expects to continue deferring this obligation indefinitely.

Estimated budget impact: S. 53 would forgive the water district's repayment obligation in exchange for payments from the State of Kansas totaling $365,424 plus an agreement from the state to pay a portion of the reservoir's operation, maintenance, and replacement costs totaling approximately $15,000 annually. Because the federal government is unlikely to collect repayments on the original obligation, these payments by the state would result in additional receipts to the federal government.

We do not expect other provisions of the bill to significantly affect the federal budget.

Except for the payment of $365,424 to the federal government by the State of Kansas, we do not expect enactment of S. 53 to affect the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Theresa Gullo, who can be reached at 226–2860.

Sincerely,

ROBERT D. REISCHAUER,
Director.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 53. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals or businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy. Little if any additional paperwork would result from the enactment of S. 53.

EXECUTIVE COMMUNICATIONS

The pertinent legislative reports and communications received by the Committee from the Office of Management and Budget and from the Department of the Interior setting forth Executive agency recommendations relating to S. 53 are set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, June 5, 1989.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This responds to your request for our views on S. 53, "To authorize the reformulation of the Cedar Bluff Unit of the Pick-Sloan Missouri Basin Program, Kansas, to provide for the amendment of water service and repayment contracts."

We do not oppose enactment of S. 53, but suggest four clarifying amendments.

The Cedar Bluff Unit of the Pick-Sloan Missouri Basin Project, Kansas, was authorized by the Flood Control Act of 1944 to provide flood control and to store intermittent flows of the Smoky Hill River for irrigation, municipal, fish and wildlife, and recreation purposes. Construction of the Unit was begun in April 1949, and the Unit was completed in July 1963. The facility is operated and maintained by the Bureau of Reclamation (the Bureau) in coordination with others in the Kansas River Basin.

S. 53 would authorize the Secretary of the Interior to contract with the State of Kansas for the sale of certain rights in the Cedar Bluff Reservoir for the sum of $365,424, plus the State's commitment to pay a proportionate share of the annual operation, maintenance, and replacement charges for the dam and reservoir. This sum would be in full satisfaction of the reimbursable costs associated with Cedar Bluff's irrigation facilities, including the Cedar Bluff

Irrigation District's (the District's) obligations under the repayment contract.

S. 53 would also provide for the implementation of a memorandum of understanding between the Bureau, the Fish and Wildlife Service (the Service), the District, and the State of Kansas, to reformulate the Cedar Bluff Unit. This reformulation would consist of reallocating the capacity of the Cedar Bluff Reservoir to provide for fish, wildlife, recreation, flood control, and other uses for the benefit of all the users of the reservoir.

After this reformulation takes place, any revenues that are received from the sale of water from the reservoir in excess of operating expenses would go to the United States to help defray the cost of the project.

In addition, the Secretary would be given the authority to transfer the fish hatchery, and the related water rights, to the State for fish, wildlife, and related purposes. The Secretary would also be permitted to transfer the property connected with the District headquarters to the District, contingent upon the District's agreement to close down the irrigation system at no cost to the United States. After this transfer, the owners of the transferred interests, and any subsequent transferees, would be required to indemnify the United States against all liability with respect to all interests associated with the District headquarters. Finally, the Secretary would be given the authority to take all other actions consistent with the memorandum of understanding discussed above.

The Cedar Bluff Unit consists of the dam and reservoir, the irrigation distribution and drainage system, a fish hatchery built by the Service, and fish, wildlife and recreation facilities built by the State of Kansas.

The Cedar Bluff Unit provides irrigation service to 6,800 acres of land in the District, and municipal water to the city of Russell, Kansas. In addition, the Service holds water rights to supply water for its fish hatchery.

The District executed a repayment contract with the United States on December 3, 1959, for repayment of $730,680. As of September 30, 1986, the District has repaid $109,602, leaving an unpaid balance of $621,078.

Since the completion of the Cedar Bluff Unit, there has been a severe depletion of the water supply into the reservoir. This water supply depletion, which is considered by the Bureau to be irreversible, is due to extensive soil and water conservation measures such as ponds on farms, and cropping practices such as contour plowing, as well as extensive ground-water development upstream from the project storage reservoir.

The District has received no irrigation releases since the 1978 irrigation season. As a consequence, the District has not realized adequate revenues to fulfill its contractual repayment obligations, and these obligations have had to be continuously deferred. The District is no longer in operation, and the fish hatchery is currently being operated by the State as a goose rearing facility.

We do not object to the passage of this legislation. This legislation would allow the Department to recover a substantial portion of its investment in this project. Without this legislation, repayment of the debt owed by the District could be deferred indefinite-

ly, and the Federal Government may never receive repayment of its investment. Furthermore, the reformulation plan that is included in the memorandum of understanding agreed to by all the parties involved would provide for maximum utilization of the limited water resources that are currently associated with the Cedar Bluff Unit.

While we do not oppose passage of this legislation, we would suggest clarifying amendments to four provisions of S. 53.

First, section 3(a) should clarify that the Reclamation Fund, and not the general fund of the U.S. Treasury, should be reimbursed for the costs of construction of the Cedar Bluff Unit. Currently, the last sentence in section 3(a) (lines 6–10 on page 3) reads:

> After the reformulation of the Cedar Bluff Unit authorized by this Act, any revenues in excess of operating expenses received from the sale of water at the Cedar Bluff Unit shall be allocated to pay the United States for the cost of the project.

This section could be interpreted to require that the revenues received by the United States in excess of operating expenses would go into the U.S. Treasury as general revenues, rather than the Reclamation Fund. The Federal funds expended to complete the irrigation and drainage system came from the Reclamation Fund, and not the general fund. Therefore, to clarify this fact, we would recommend that the last line of section 3(a) be amended to read as follows:

> After the reformulation of the Cedar Bluff Unit authorized by this Act, all net revenues received by the United States from the sale of water at the Cedar Bluff Unit shall be credited to the Reclamation Fund.

Second, we would suggest that on line 3, page 3, the word "the" after the phrase "satisfaction of" be deleted, and replaced with the word "all". This line would then read, "* * * satisfaction of all reimbursable costs associated with irrigation * * *." This change would clarify the intent of the legislation that all of the reimbursable costs associated with irrigation and the District's financial liability for this project would be extinguished.

Third, we would recommend that section 3 be amended by adding the following sentence at the end of subsection (b):

> If any of the property transferred by this subsection to the State of Kansas is subsequently transferred from State ownership or used for any purpose other than those provided for in this subsection, title to such property shall revert to the United States.

This amendment would ensure that the property transferred by this subsection would be used for the purposes intended by this legislation. Furthermore, it would make S. 53 consistent with the intent of the memorandum of understanding referred to in section 1 of the bill.

Finally, section 4 of the bill would protect the United States from liability associated with the District headquarters after transfer. However, the United States may still be liable for the other facili-

ties transferred under the provisions of the bill. We do not believe that this was the intended result of this legislation.

In order to rectify this problem, we urge the Committee to amend S. 53 to protect the United States from liability associated with all of the lands and facilities that would be transferred by this bill. Specifically, the last sentence of section 4 should be deleted, and a new section 5 should be added, which would read as follows:

> The transferees of any interests conveyed pursuant to this Act shall assume all liability with respect to such interests and shall indemnify the United States against all such liability.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

DOYLE G. FREDERICK,
Acting Assistant Secretary.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 53, as reported.

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